

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DORIS O'LEARY,
Plaintiff,

Case No. C14-1043RSM

v.

ORDER ON SOCIAL SECURITY
DISABILITY

CAROLYN COLVIN, Acting
Commissioner of Social Security,

Defendant.

I. INTRODUCTION

Plaintiff, Doris O'Leary, brings this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of the final decision of the Commissioner of Social Security denying her claim for Social Security Disability (SSD) insurance benefits. The parties agree that this Court should remand the ALJ's decision. The issue is whether the case should be remanded for further proceedings or for a finding of disability and payment of benefits.

II. BACKGROUND

Plaintiff filed an application for SSD benefits, alleging disability beginning September 24, 2010. Tr. 22. Plaintiff's claims were denied initially and on reconsideration. *Id.* On November 27, 2012, Administrative Law Judge ("ALJ") Tom L. Morris held a hearing with Plaintiff. Tr. 22 and 43-93. Plaintiff was represented by counsel, Travis Hanson. Tr. 43. Vocational Expert ("VE") Paul Prachyl was also present and testified. *Id.* On March 18, 2013,

1 the ALJ found Plaintiff not disabled. Tr. 37. Plaintiff requested administrative review of the
2 ALJ's decision, and on May 14, 2014, the Appeals Council declined review, making the ALJ's
3 decision the final decision of the Commissioner for purposes of judicial review. Tr. 1-5.
4 Plaintiff timely filed this judicial action.

5 6 **III. JURISDICTION**

7 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§
8 405(g) and 1383(c)(3).

9 10 **IV. STANDARD OF REVIEW**

11 This Court has the discretion to reverse the Commissioner's decision with or without a
12 remand for further administrative proceedings. *See* 42 U.S.C. § 405(g); *Harman v. Apfel*, 211
13 F.3d 1172, 1177-78 (9th Cir. 2000). "[R]emand for further proceedings is unnecessary if the
14 record is fully developed and it is clear from the record that the ALJ would be required to
15 award benefits." *Holohan v. Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001).

16 The Ninth Circuit articulated a test for determining when to remand for an immediate
17 finding of disability and award of benefits in *Smolen v. Chater*, 80 F.3d 1273 (9th Cir. 1996)
18 ("Smolen Test"). Accordingly, this Court may credit evidence and remand for an award of
19 benefits where:
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- 21 1) The ALJ has failed to provide legally sufficient reasons for rejecting [medical
22 opinions or a claimant's testimony];
- 23 2) There are no outstanding issues to be resolved before a determination of
24 disability can be made; and
- 25 3) It is clear from the record that the ALJ would be required to find the claimant
26 disabled were such evidence credited.
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1 *See id.* at 1292; *See also Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). If, however,
 2 unresolved issues remain such that the record does not clearly require a finding of disability,
 3 the Court should remand for further proceedings to remedy defects in the original proceedings.
 4 *Id.*; *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989).

5 **V. EVALUATING DISABILITY**

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 7 As the claimant, Ms. O’Leary bears the burden of proving that she is disabled within the
 8 meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.
 9 1999) (internal citations omitted). The Act defines disability as the “inability to engage in any
 10 substantial gainful activity” due to a physical or mental impairment which has lasted, or is
 11 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
 12 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are
 13 of such severity that she is unable to do her previous work, and cannot, considering her age,
 14 education, and work experience, engage in any other substantial gainful activity existing in the
 15 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-
 16 99 (9th Cir. 1999).
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19 The Commissioner has established a five step sequential evaluation process for
 20 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
 21 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
 22 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
 23 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
 24 one asks whether the claimant is presently engaged in “substantial gainful activity” (SGA). 20
 25 C.F.R. §§ 404.1520(b), 416.920(b).¹ If she is, disability benefits are denied. If she is not, the
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28 ¹ Substantial gainful employment is work activity that is both substantial, *i.e.*, involves significant physical and/or
 mental activities, and gainful, *i.e.*, performed for profit. 20 C.F.R § 404.1572.

Commissioner proceeds to step two. At step two, the claimant must establish that she has one or more medically severe impairments, or combination of impairments, that limit her physical or mental ability to do basic work activities. If the claimant does not have such impairments, she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe impairment, the Commissioner moves to step three to determine whether the impairment meets or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d), 416.920(d). A claimant whose impairment meets or equals one of the listings for the required twelve-month duration requirement is disabled. *Id.*

When the claimant's impairment neither meets nor equals one of the impairments listed in the regulations, the Commissioner must proceed to step four and evaluate the claimant's residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the Commissioner evaluates the physical and mental demands of the claimant's past relevant work to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant is able to perform her past relevant work, she is not disabled; if the opposite is true, then the burden shifts to the Commissioner at step five to show that the claimant can perform other work that exists in significant numbers in the national economy, taking into consideration the claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable to perform other work, then the claimant is found disabled and benefits may be awarded.

VI. ALJ DECISION

Utilizing the five-step disability evaluation process,² the ALJ found:

² 20 C.F.R. §§404.1520, 416.920.

(Ms. O’Leary) could perform, and that she is disabled as a matter of law. Plaintiff asks the Court to remand her case for a finding of disability and award of benefits. In the alternative, Ms. O’Leary challenges the ALJ’s evaluation of and weight accorded to the medical opinions of the State consultants Dr. Alex Fisher and Dr. Eugene Kester, and argues that her case should be remanded for further proceedings so that the ALJ can appropriately examine and weigh the opinions of these doctors.

VIII. DISCUSSION

A. Step Five Analysis

Plaintiff argues that the ALJ erred in determining that she was capable of performing work in a significant number of jobs in the national economy, such as electrical accessory assembler, small product assembler, and final assembler, because he did not consider the occupational bases for those jobs in view of her nonexertional limitations. Specifically, Plaintiff argues that “very heavy,” “heavy,” and “medium” occupational bases were completely eroded, and that she is disabled under a “light” rule. Dkt. #13 at 7-14. The Commissioner agrees that errors were made in the ALJ’s analysis, but that remand is necessary to obtain vocational expert testimony regarding whether Plaintiff was able to perform work at a higher exertional level than light work, given that the vocational expert was silent as to these issues during the hearing. Dkt. #20 at 2-3. The Court disagrees.

At step five, it is the Commissioner’s burden to prove that the claimant can perform other work that exists in significant numbers in the national economy, taking into consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. The Commissioner does not dispute that the ALJ did not obtain evidence that she could perform a relevant job given her RFC and vocational

1 profile; rather, she seeks remand of this matter for further proceedings to obtain evidence that
2 was previously absent from the record.

3 In this case, the ALJ found that Ms. O’Leary was capable of performing a full range of
4 work at all exertion levels, but with nonexertional limitations. The vocational expert testified
5 that Ms. O’Leary could perform what are considered to be light exertional jobs. Tr. 36 and 88-
6 90. The ALJ specifically asked the VE to consider a hypothetical individual that could work at
7 all exertional levels, with no exertional limits, but with the nonexertional limitations applicable
8 to Ms. O’Leary. Tr. 88-89. He also asked the VE to consider an individual that could work at
9 light exertional levels. Tr. 89-90. The ALJ accepted the testimony of the vocational expert
10 without qualification, and without follow up as to any available jobs at any other specific
11 exertional levels other than light, implicitly accepting that Ms. O’Leary can work at only light
12 exertional levels. Tr. 36 and 88-90.

15 The evidence in the record also establishes that Ms. O’Leary was of advanced age, had
16 a high school education, and had no transferable skills. Accordingly, this Court agrees with
17 Plaintiff, for the reasons set forth in her briefing, that proper use by the ALJ of the Grids as a
18 guideline and framework for decision making should have resulted in a finding that Ms.
19 O’Leary is “disabled.” *Distasio v. Shalala*, 47 F.3d 348, 349-50 (9th Cir. 1995); *Cooper v.*
20 *Sullivan*, 880 F.2d 1152, 1157 (9th Cir. 1989) (holding that once the testimony of a vocational
21 expert establishes the level of work a claimant is able to perform, the ALJ is bound by the
22 favorable results dictated by the Grids).

25 Moreover, Plaintiff’s case was filed almost four year ago. As the Ninth Circuit has
26 observed, “[r]emanding a disability claim for further proceedings can delay much needed
27 income for claimants who are unable to work and are entitled to benefits, often subjecting them
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1 to ‘tremendous financial difficulties while awaiting the outcome of their appeals and
 2 proceedings on remand.’” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (quoting
 3 *Varney v. Secretary of Health & Human Services*, 859 F.2d 1396, 1398 (9th Cir. 1988)).

4 As the Commissioner failed to meet the burden of proof at step five, and the Court now
 5 finding that the record is fully developed, the Court also finds that the Plaintiff is disabled
 6 under the Act. Further proceedings are unnecessary in this case and would only delay
 7 Plaintiff’s receipt of benefits.³

9 IX. CONCLUSION

10 For the foregoing reasons, the Court hereby ORDERS that this case be REMANDED
 11 for a finding of disability and an award of benefits.

12 DATED this 9th day of April 2015.

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15 RICARDO S. MARTINEZ
 16 UNITED STATES DISTRICT JUDGE
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27 ³ Given the Court’s finding that Ms. O’Leary is disabled, the Court does not reach Plaintiff’s
 28 alternative arguments regarding the analysis of, and weight give to, the state’s consultative
 experts.